Arbitration

ADR (Mediation etc.)

- · adversarial spirit/procedure
- co-operative procedure/spirit
- likely to disrupt your business relationship
- not (or less) disruptive
- gets into the machinery of the legal department which controls the process
- remains within the active control of the management
- all evidentiary material submitted (including second-best materials)
- only the best materials; concentration on the essence

- builds up fixed "positions"
- wants a pragmatic, principled and flexible negotiation; aims to bridge the gap

formal procedure

 non legalistic procedure, but carefully structured

joint sessions only

joint sessions <u>and</u> separate caucus sessions

• binding mechanism

• non-binding mechanism

• adjudicatory function

· advisory function

decides

• solves or recommends

• the rule of law governs

- · commercial perspectives prevail
- determines issues that had arisen in the past
- looks not only backwards, but also (and essentially) to the future
- the arbitrator can hardly be "creative"
- the mediator can assist the parties "to enlarge the cake," thus to develop a creative and <u>mutually</u> advantageous business solution
- goal: to win (the process is "rights driven" and problem-oriented)
- goal: to solve the dispute on an acceptable basis (the process is

"interest driven" and result-oriented

• takes a lot of time

speedy

• expensive

- more cost-effective
- enforceability of the outcome: yes
- enforceability of the outcome: no